IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

FATEH LAL VS BHAGWATI LAL
(S.B.Civil First Appeal No. 134/89)

Date of judgment:- 25 October, 2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.B.N.Kalla, for the appellant.
Mr.J.K.Bhaiya, for the respondent.

BY THE COURT:-

Reportable

1. This appeal is directed against judgment and decree dated 23rd August , 1989 passed by District Judge, Udaipur in Civil Suit No.60/1984, whereby the suit for recovery of a sum of Rs.15,930/- preferred by the plaintiff-appellant, has been decreed to the extent of Rs.6,120.40. The plaintiff-appellant is aggrieved by the judgment and decree passed by the learned trial Court denying the relief to the extent of principal amount Rs.7,797.40 plus interest thereon.

2. The plaintiff-appellant and the defendant-respondent both are businessmen, engaged inter-alia in the business of sale and purchase of cotton seeds. The account between the plaintiff and the respondent was settled. After due adjustment outstanding balance was struck and as on 18th July, 1981 an amount of Rs.12,000/- was found outstanding against the defendant, which

was duly acknowledged by the defendant putting his signature at the foot of the account stated. It was agreed upon between the parties that defendant shall pay interest on the amount outstanding @ 1% per month. However, the defendant made default in making the payment, therefore, the plaintiff preferred a suit for recovery of principal amount a sum of Rs.12,000/- alongwith interest @ 1% per month quantified at Rs.3,930/-. The plaintiff also claimed interest pendente lite and the future interest till the date the amount is recovered.

3. The suit was contested by the defendant by filing a written statement, wherein the liability to pay a sum of Rs.12,000/- as on 18.7.1981 was not denied. However, it was stated that out of Rs.12,000/- outstanding, an amount of Rs.7,797.60/- already stands adjusted on account of the goods purchased by the plaintiff from the defendant time to time and the cash payments made on the various occasions. In the additional pleas incorporated in the written statement, the defendant also set out the complete details of the various transactions, against which the adjustment of aforesaid amount was claimed.

4. On the basis of the pleading of the parties, the learned trial Court framed following issues for determination:-

> "1- क्या प्रतिवादी ने वादोत्तर के विशेष कथन के पैरा नंबर '' ख'' में बताई हुई रकमों की अदायगी कर दी ?
> (प्रतिवादी)

2- क्या प्रतिवादी पुराना हिसाब खुलवाने का अधिकारी है ? (प्रतिवादी)
3- अनुतोष।"

5. On behalf of the defendant , Shri Bhagwati Lal (defendant himself) D.W.1, Shri Ram Swaroop, D.W.2 and Shri Dinesh Chandra Munot, D.W. 3 were examined as witnesses. The plaintiff got himself examined as witness. The defendant also produced the documentary evidence viz. the bills and the excerpts from the books of account which were marked as Ex.A/1 to A/25.

6. After hearing both parties and due consideration of the evidence on record, the learned trial Court arrived at the finding that the adjustment of Rs.7,797.40 as claimed by the defendant in the written statement stands duly proved, therefore, the plaintiff is entitled to decree for the recovery of remaining principal amount Rs.4,202.60 and the interest thereon @ 12% per annum quantified at Rs.1917.80 . The plaintiff was also held entitled for the interest pendente lite and till the recovery of the amount @ 6% per annum. The issue no.2 regarding the claim of the defendant to reopen the old account was decided by the learned trial Court against the defendant and in favour of the plaintiff.

7. Assailing the findings of the learned trial Court on issue no. 1, it is contended by the learned counsel for the appellant that an entry in the books of account regarding a certain sum paid or

any other business transaction not supported by any receipt of payment or voucher is not sufficient to establish that the sum was paid by the defendant to the plaintiff or the defendant had any claim with regard to the goods purchased by the plaintiff from him on credit. In this regard, the learned counsel relied upon a Bench decision of Andhra Pradesh High Court in the matter of Vasireddi Seetharamaiah vs. Srirama Motor Finance Corporation, Kakinada and another (AIR 1977 A.P. 164). The learned counsel contended that the bills and the accounts produced by the defendant which do not bear the signature of the plaintiff cannot be relied upon. The learned counsel further contended that the accounts having been settled between the parties, the outstanding balance was struck and the same was duly acknowledged by the defendant putting his signature in the account books maintained by the plaintiff and therefore, the defendant is liable to pay the balance amount as per the "account stated". In this regard, the learned counsel relied upon a Bench decision of Gauhati High Court in the matter of Sachindra Prasad Chakravarty and another vs. Ahmed Ali and others, (AIR 1988 Gauhati, 33).

8. Per contra, it is urged on behalf of the defendant that it is not in dispute that the account between the parties was settled and the balance was struck, whereby an amount of Rs.12,000/- was found outstanding against the defendant as on 18th July,

2001. But, it stands proved on the basis of the evidence on record that after the aforesaid date on account of various business transactions between the plaintiff and the defendant, an amount of Rs.7797.40 stands adjusted against the amount outstanding, therefore, the learned trial Court has committed no error in passing the impugned judgment and decree, whereby the suit preferred by the plaintiff has been decreed after adjusting the aforesaid amount. The learned counsel submitted that apart from the books of account, the defendant has also produced the bills whereby the goods were purchased by the plaintiff from the defendant on various dates during the relevant period, therefore, the entries in the books of account, stand corroborated by other evidence on record. Accordingly, the learned counsel urged that the appeal preferred by the appellant is devoid of any merit, and deserves to be dismissed with costs.

9. I have considered the rival submissions of the parties and have also perused the record.

10. As per provisions of Section 34 of the Evidence Act, the entires in the books of account regularly kept in course of business, are relevant whenever they are referred to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Therefore, even if the books of account were regularly kept in course of the business, mere entries in the books of

account would not be sufficient to charge any person with the liability and there should be evidence on record to corroborate the entries. But, then Section 34 does not require any particular form of corroborative evidence. The corroborative evidence may be oral or documentary. Even the plaintiff's own testimony on oath in support of the entries in his books of account could be treated sufficient corroboration, to fasten the defendant with liability.

11. Adverting to the facts of the present case, it is to be noticed that the defendant has given complete details of all the transactions against which an adjustment of Rs.7,797.40 has been claimed by him. The specific averments made in the written statement in this regard have not been controverted by the plaintiff by filing a rejoinder. Moreover, the entries in the books of account and the various bills issued stand corroborated by oral deposition of the defendant Bhagwati Lal, D.W.1. The suggestion put to him in the cross examination that the sale transactions of the cotton seeds which relate to the bills produced were independent of the amount outstanding was denied by him and it was stated that no goods are dispatched from his godown without bills. He has stated in unequivocal terms that in the ordinary course of business , the signatures of the purchaser are not obtained on the bills and the entries in the books of account. The defendant has also produced his son

Dinesh Kumar Munot, as witness D.W.3, who used to issue the bills in absence of his father at the business premises. The bills produced and the fact that the transactions of sale were on credit, further stand proved by oral deposition of the said witness DW3. That apart, it is relevant to mention here that the plaintiff-P.W.1 in his cross examination has stated in unequivocal terms that he has not seen any bill issued by the defendant which bears his signature , however, he can produce such bills issued by the defendant on which the signatures of the purchaser are obtained. He has further stated that he is not in possession of any bill issued by the defendant which bears his signature but, he may got produced such bills from others. However, he failed to name even a single person from whom such bills can be got produced. Thus, even from the statement of the plaintiff-P.W.1, it is apparent that in ordinary course of business, the signatures of the purchaser are not obtained by the selling dealer the defendant on the bills even if the transaction were on credit. Therefore, nothing turns on the question that bill issued for transaction on credit do not bear signature of the defendant. There is absolutely no evidence on record to suggest that the entries made in the books of account and the bills issued are fake ,concocted or false. Thus, in absence of any evidence contrary on record, there is no reason to doubt the veracity of the entries in the books of account and bills issued by the

defendant.

In my considered opinion, in totality of the facts and circumstances of the present case, the entries in the books of account and the bills which relate to the adjustment of an amount of Rs.7,797.40 claimed by the defendant stand duly proved by oral as well as documentary evidence on record. The learned trial Court has committed no error whatsoever in deciding issue no.1 and holding that the plaintiff is entitled to decree after adjustment of a sum of Rs.7794.40, against the principal amount Rs.12,000/- claimed in the suit.

In view of the findings arrived at as aforesaid the Bench decision of Hon'ble Andhra Pradesh High Court in the matter of Vasireddi Seetharamaiah's case has no application in the instant case. Similarly, the defendant having been found entitled for the adjustment claimed against the balance amount as per 'account stated', the ratio of the Bench decision of the Guwahati High Court in Sachindra Prasad Chakravarty's case has also no bearing in the present case.

12. In the result, the appeal fails and it is hereby dismissed with costs.

(SANGEET LODHA),J.